

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 04-0273**

**IFTA**

**For The Period: 1999-2002**

**NOTICE:** Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUES**

**I. IFTA: Sufficiency of documentation**

**Authority:** IFTA R1210.300; IC 6-8.1-5-1(b)

The taxpayer protests the proposed assessments; penalty and interest are also protested.

**STATEMENT OF FACTS**

The taxpayer is a contract hauler, hauling products provided by brokers. More facts will be provided as needed below.

**I. IFTA: Sufficiency of documentation**

**DISCUSSION**

In correspondence the taxpayer stated:

I was leased to company's that withheld funds to pay fuel taxes all trip miles and driver logs were sent to company to settle weekly pay.

And the taxpayer stated, "[a]ll plates were purchased through company...." and further that "[w]hen leaving a company you had to turn in all permits & plates. I purchased plates in 2000 because [Company H] did not have plate program." Finally, the taxpayer states that it will "bring documentation to support" its contention that it "owe[s] no taxes." The taxpayer says it will "get copy's of leases fuel receipts and mileage reports."

Prior to the hearing date, the taxpayer faxed to the Department various documentation. Among the documents was a letter, dated September 9, 2004, from Company C which stated in part "[Taxpayer's] fuel tax was included in [Company C]'s Oklahoma IFTA returns for the periods 1/1/1999 through 12/31/2002." The letter does not indicate which trucks were purportedly covered, nor whether there was a lease agreement and what the terms of any lease were. Also

among the faxed items was a “Lease Agreement” between the taxpayer and Company B (dated October 9, 2000). The faxed lease is only a portion, and does not appear to indicate who pays the taxes.

The taxpayer also faxed a copy of part of an “Independent Contractor’s Lease Agreement” between it and Company H (lease dated March 20, 2000). The Auditor has already reviewed the March 20, 2000, lease. The Auditor took into account that since the lease specified a fuel tax chargeback, that Company H is assumed to bear the reporting responsibility. Thus the taxpayer has already received any credit for this specific issue and the submitted information has already been accepted.

On the day of the hearing the taxpayer also faxed to the Department a fax that he had received from Company B. The fax stated the following (from Company B):

I am not aware of what type of contract you had with us, but whatever type of contract existed one of two things would have happened:

1. Deducted your portion of fuel taxes from your settlement and then paid these taxes on your behalf.
2. Agreed to pay your taxes and did not deduct them from your settlements.

Either way, we would have paid your fuel taxes during your owner operator contract period with us.

Again, the same problems hold—the vehicles at issue are not specified, and the actual lease language is not shown.

Under IFTA R1210.300, in relevant part:

The assessment made by a base jurisdiction pursuant to this procedure shall be presumed to be correct and, in any case where the validity of the assessment is questioned, the burden shall be on the licensee to establish by a fair preponderance of evidence that the assessment is erroneous or excessive.

And the Indiana Code 6-8.1-5-1(b) states in part:

The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made.

The taxpayer has not met its burden of proof. The taxpayer also protested any “penalty or interest on the audit....” Taxpayer did not develop any argument regarding the penalty and interest, and is thus also denied regarding the penalty and interest.

### **FINDING**

The taxpayer’s protest is denied.